

Nebraska Sales and Use Tax Guide for Bars, Taverns, and Restaurants

April, 2005

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Other information guides you may need:

Prepared Food
Food, Food Ingredients, and Dietary
Supplements



The purpose of this information guide is to explain the collection of Nebraska and local option sales tax by bars, taverns, and restaurants. It is not intended to answer all questions which may arise, but is intended to enable a person to become familiar with the sales tax provisions affecting bars, taverns, and restaurants.

Overview

Sales of prepared food and alcoholic beverages by bars, taverns, and restaurants are subject to tax. Prepared food is food intended for, and which is generally ready for, immediate consumption, either on or off the premises of the seller.

Sales of alcoholic beverages are taxable, whether sold as “off-sale” or by-the-drink as “on-sale.”

Prepared Food. Prepared food means food that meets any of the following conditions:

- A. Food sold with eating utensils (see below) provided by the seller;
- B. Two or more food ingredients mixed or combined by the seller for sale as a single item, including self-service fountain drinks or Cappuccino from self-service dispensers. Examples include meals and sandwiches; or
- C. Food sold in a heated state or heated by the seller. Examples include hamburgers, rotisserie chicken, baked beans, soup, and coffee.

Taxable Sales

Nearly all food and nonalcoholic beverages sold by bars, taverns, and restaurants are considered prepared food and are subject to tax. Sales of alcoholic beverages are taxable.

Bar and Tavern Example: A customer orders a sandwich, a bag of chips, and a fountain drink. The selling price of the three items is subject to tax whether sold for one price or priced separately. (See item #2 under “Eating Utensils,” below)

Restaurant Example: A customer orders a meal, including a soft drink and piece of pie. The selling price of the meal, drink, and pie is subject to tax whether sold for one price or priced separately. The customer also orders a whole pie to take home. The selling price of a whole pie is also taxable (See item #2 under “Eating Utensils,” below).

Eating Utensils

Foods that do not fall into Categories B or C of the “Overview” above are taxable when sold with eating utensils provided by the seller. Eating utensils include plates, knives, forks, spoons, glasses, cups, napkins, or straws.

Eating utensils are deemed to be **provided by the seller** when:

1. The seller’s customary practice is to physically give the eating utensil(s) to the purchaser:

For example:

- Bagels sold with eating utensils are taxable;
- Box or sack lunches with napkins or plastic forks included are taxable; or

2. More than 75 percent of the seller’s total sales are sales of alcoholic beverages and prepared food described in Categories B and C of the “Overview” above and the utensils are merely made available to the purchaser at the time of sale:

For example:

- Individual bag of chips or can of soda is taxable when utensils are available on a nearby counter;
- Whole pies and cakes are taxable when utensils are available.

Exempt Sales of Food or Food Ingredients

Bars, taverns, and restaurants which also sell a limited number of nontaxable food items such as gallons of milk, sacks of flour, cartons of eggs, or packages of cheese may sell such items exempt when separate records are maintained.

The information shown on the customer's invoice or cash register tape should provide an adequate description of the nontaxable food items sold.

Sales of Alcoholic Beverages

Sales of alcoholic beverages are taxable, whether sold packaged as "off-sale" or by-the-drink as "on sale." Bars, taverns, and restaurants that hold a liquor license for the consumption of alcoholic beverages are permitted to include the sales tax in the selling price of beverages that are consumed on their premises. Sales of soft drinks from such establishments may be treated in the same manner.

Consumer's use tax is due on the seller's cost of alcoholic beverages provided free-of-charge.

Catering

Individuals or businesses providing catered foods or beverages must collect sales tax on receipts from preparing or serving such foods and beverages. Charges for food, wages, bartenders, wait staff, chefs, use of dishes, room service, chairs, tables, etc., are taxable even though separately stated on the billing invoice. The tax applies whether the food is served by the seller or merely provided to the purchaser for consumption. Sales tax does not apply to separately stated charges for announcers, doormen, or other persons not connected with the preparation or serving of prepared food.

Vending Machine Sales

All food and other items of tangible personal property sold through vending machines are taxable. The location of the machine determines the applicable **local option** (city or county) sales tax that applies to the sales. The gross receipts from vending machine sales includes the state and local option sales tax. The sales tax does not have to be separately stated on vending machine sales.

Sales to Governmental Entities

Sales of prepared food billed directly to and paid for by the U.S. Government, the State of Nebraska, or any of its counties or municipalities are not taxable. If the bill is issued to an employee of the governmental unit, the sale is taxable even though the employee is reimbursed by the governmental unit.

Purchases

The following items may be purchased tax-free as a sale for resale by bars, taverns, and restaurants:

- *Food, food ingredients, and alcoholic beverages that will be resold to customers, such as ingredients to prepare meals, candy, chips, beer, liquor, soft drinks - packaged or fountain.*
- *Single-use disposable food service items provided to customers, such as paper napkins, paper plates, paper*

place mats, straws, plastic eating utensils, foam cups, and boxes.

Discounts and Coupons

Seller's Coupon. When a customer uses a coupon or a frequent-buyer card, etc., for a discount or a free meal (e.g., "buy one, get one free") and a third party is **not** reimbursing the seller for the discounted amount, sales tax is due on the amount actually paid by the customer. The coupon amount is not taxed.

Manufacturer's Coupon. When a customer uses a coupon for a discount or a free meal and the seller is reimbursed by a third party for the discounted amount, sales tax is due on the full selling price of the meal before subtracting the coupon amount. The coupon amount is taxed.

Group Discounts. When a seller offers a discount to all members of a particular group, such as senior citizens, credit unions, or AAA members, the amount of the discount is not taxed unless a third party is reimbursing the seller for the discounted amount.

General Information

Tips and Gratuities. Discretionary tips or gratuities given by customers are not taxable even if they are charged to the customer's bill instead of the customer giving the tip directly to the server.

When the amount or percentage for a tip or gratuity is set and added by the bar, tavern, or restaurant to the customer's bill, the total charge is taxable even if the tip is separately stated on the customer's bill or if only a portion is given to the server.

Employee Meals. Amounts charged to employees for meals are taxable even if they are discounted. Consumer's use tax is not due on meals prepared by employers and provided to employees without charge.

Delivery Charges. Charges to deliver prepared food items are taxable, even if separately stated on the customer's invoice.

Cover Charges. Cover charges, minimum charges, or any similar charges by a bar, tavern, or restaurant are subject to tax as part of the gross receipts for the sale of admissions. Sales tax must be remitted by the business granting the admission even when the admission proceeds are paid to a band or other entertainer.

Gift Certificates. The sale of a gift certificate is not taxable. When the certificate is used to purchase taxable prepared food or alcoholic beverages, the sale is taxable as if cash were used to make the purchase.

Reporting the Tax. When the sales tax is included in the receipts from sales of alcohol by-the-drink, the tax amount must be deducted from the total amount charged to determine the actual amount of the sale for reporting on line 1 of the Nebraska and Local Sales and Use Tax Return, Form 10 (See Nebraska Sales and Use Tax Regulation 1-008 for additional information on calculating the taxable receipts) .

Taxpayer Assistance. For additional information, please visit our Web site at: www.revenue.ne.gov or contact the Nebraska Department of Revenue at 1-800-742-7474 (toll free in Nebraska or Iowa) or 1-402-471-5729 if calling from outside Nebraska or Iowa.